

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

**APRIL 9, 1996**

**NOTICE**

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3161-FT

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

**STATE OF WISCONSIN,  
ex rel. STATE OF ARIZONA  
and MICHELLE R. D.,**

**Petitioners-Respondents,**

**v.**

**BRIAN L. NOWAK,**

**Respondent-Appellant.**

APPEAL from orders of the circuit court for Oconto County: LARRY L. JESKE, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Brian Nowak appeals two orders in this child support proceeding.<sup>1</sup> Nowak raises two issues: (1) whether the trial court had exclusive jurisdiction to proceed on a Uniform Support Petition when the State

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<sup>1</sup> This is an expedited appeal under RULE 809.17, STATS.

of Arizona had previously entered judgment and ordered child support, and (2) whether the trial court had the power to modify the Arizona child support order.

Because the State does not dispute Nowak's contention that the Arizona judgment was void for lack of notice and due process, and because Nowak was properly served in the Oconto County proceedings, we conclude: (1) The trial court properly obtained personal and subject matter jurisdiction to determine paternity and set child support, and (2) the trial court erroneously recognized and modified the void Arizona judgment. We therefore affirm in part, reverse in part and remand to the trial court to determine paternity, set support, and other proceedings consistent with this opinion.

The underlying facts are undisputed. Nowak lives in Wisconsin. Kristina D. and her mother, Michelle R. D., live in Maricopa County, Arizona. In September 1989, the Superior Court for Maricopa County entered a default paternity judgment against Nowak, finding him to be the father of Kristina D. and ordering him to pay \$207 per month child support commencing October 1, 1989.

In May 1991, the Arizona judgment was registered in Oconto County, Wisconsin. In October 1991, upon Nowak's motion and under § 767.65(40), STATS., 1991-92, the Oconto County Circuit Court vacated the registration upon its finding that Nowak was deprived of notice and due process with respect to the Arizona proceeding. The order vacating the registration of the Arizona judgment

found that the State of Arizona failed to provide notice to respondent, Brian Nowak, of a proceeding to set aside an order of the Arizona Court of dismissal from their inactive calendar concerning support. As a result of such failure respondent was not given due process to respond to State of Arizona's motion to reopen the foreign case.

IT IS THEREFORE ORDERED that respondent's motion to vacate the Registration of the Support Order from the State of Arizona is hereby granted.<sup>2</sup>

In June 1994, the State of Arizona and Michelle, Kristina's mother, initiated this action in Oconto County by filing a uniform support petition under ch. 769, STATS. (effective April 30, 1994). The petition noted that the 1989 Arizona paternity and support order "WAS VACATED IN WI ON 10/1/91" and requested that the court (a) establish paternity, (b) establish child support and (c) enter a judgment for past support.

Nowak moved to dismiss the petition for lack of jurisdiction. The court determined that it had personal jurisdiction over Nowak because he was served personally with the summons and petition in this state. It concluded that it had subject matter jurisdiction under § 769.305, STATS., to issue, enforce or modify a support order or determine parentage or order compliance with a support order.

However, notwithstanding the 1991 order vacating the registration of the 1989 Arizona judgment, the trial court also concluded that it was required to recognize Arizona's judgment under §§ 769.205(4) and 769.207(1)(a), STATS. It further concluded that under § 769.315, STATS., Nowak was not allowed to raise paternity as a defense. The trial court entered a second order that Nowak participate in a child support program and modified the amount of support set by Arizona. Nowak appeals these two orders.

Nowak argues that the trial court is without jurisdiction to proceed on the Uniform Support Petition because Arizona had entered a 1989 default judgment on these same issues and ordered child support. Nowak relies on § 769.205(4), STATS., which provides: "A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state that has issued a child support order under a law substantially similar to this chapter." Nowak argues that the trial court is powerless to modify the Arizona

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<sup>2</sup> The Honorable John M. Wiebusch rendered the 1991 order vacating registration of the 1989 Arizona judgment.

support order, *see* § 769.611(1), STATS., and may enforce the Arizona support order, but only if registered. *See* § 769.601, STATS.<sup>3</sup> We disagree.

Nowak's argument requires statutory interpretation, which presents questions of law that we review *de novo*. *See State v. Michels*, 141 Wis.2d 81, 87, 414 N.W.2d 311, 313 (Ct. App. 1987). The primary source of interpretation is the common and approved usage of the statutory language itself. *Hartlaub v. Coachmen Indus.*, 143 Wis.2d 791, 797, 422 N.W.2d 869, 871 (Ct. App. 1988). Statutes are to be given a reasonable interpretation and not one that will work an absurd result. *In re J.A.L.*, 162 Wis.2d 940, 963, 471 N.W.2d 493, 502 (1991). A cardinal rule is to favor a construction that will fulfill the purpose of the statute over a construction that defeats the manifest object of the act. *In re Estate of Halsted*, 116 Wis.2d 23, 29, 341 N.W.2d 389, 392 (1983).

Section 769.205(4), STATS., presupposes the entry of a valid judgment or order. Orders or "[j]udgments entered contrary to due process are void." *Neylan v. Vorwald*, 121 Wis.2d 481, 488, 360 N.W.2d 537, 540 (Ct. App. 1984) (citations omitted). A void judgment or order is something very different from a valid one. *Id.* at 496, 360 N.W.2d at 544. "[I]t is legally ineffective[,] may be collaterally attacked at any time in any proceeding, state or federal [and] it should be treated as legally ineffective in the subsequent proceeding. Even the party which obtained the void judgment may collaterally attack it." *Id.* A void judgment cannot be validated by consent, ratification, waiver or estoppel. *Id.* at 495, 360 N.W.2d at 544. This principle is "of ancient and universal application." *Id.* We conclude that the term "order" in § 769.205(4) must be interpreted to mean a "valid order" to avoid an absurd result.

In his appellant brief, Nowak states: "It is the position of the appellant that the trial court's order vacating the registration relating to the [Arizona] 1989 child support order remains in effect." We agree. Indeed, because Nowak has previously taken the position that the Arizona judgment was void, he cannot now be heard to claim otherwise. A deliberate choice of trial strategy is binding, and appellate error based upon such strategy will not

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<sup>3</sup> The State, through Oconto County corporation counsel, agrees that § 769.611(2), STATS., requires registration of a support order from another state before the trial court can consider modification, and that "the trial court could not modify the State of Arizona child support order because the court did not comply with the requirements of Sec. 769.611 Wis Stat." It states that it is prepared to follow whatever procedure we require.

be considered by a reviewing court, "even if it backfires ...." *State v. McDonald*, 50 Wis.2d 534, 538, 184 N.W.2d 886, 888 (1971). A party may not assume one position during litigation and later argue that the court's acceptance of that position was error. *In re H.N.T.*, 125 Wis.2d 242, 253 n.7, 371 N.W.2d 395, 400-01 n.7 (Ct. App. 1985).

Upon Nowak's 1991 motion, the trial court applied then effective § 767.65(40), STATS., 1991-92, and vacated registration of the Arizona judgment. The order vacating the Arizona registration of judgment was never appealed and remains in effect. Neither party disputes that the Arizona judgment was entered without notice and contrary to due process, rendering it void.<sup>4</sup> An order issued contrary to due process is not an order issued "under a law substantially similar to this chapter." Section 769.205(4), STATS. Because the Arizona judgment is void, it is not recognized under § 769.205(4). We need not give full faith and credit to the void judgment of another state. Arizona's invalid judgment does not preclude Wisconsin from establishing paternity and support.

The trial court correctly determined that it had personal jurisdiction because Nowak was personally served, *see* § 769.201(1), STATS., and subject matter jurisdiction. *See* § 769.305(2), STATS.; *cf. In re H.N.T.*, 125 Wis.2d at 244-45, 371 N.W.2d at 396-97 (the constitution and statutes define and limit a court's jurisdiction). Because the 1989 Arizona judgment is a nullity, the trial court may proceed on the uniform support petition to determine paternity and support. *See* § 769.305, STATS.<sup>5</sup>

*By the Court.* – Orders affirmed in part; reversed in part and cause remanded with directions. No costs on appeal.

This opinion will not be published. RULE 809.23(1)(b)5, STATS.

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<sup>4</sup> In addition, Arizona's notarized petition requests Wisconsin to take jurisdiction in view of the order vacating the Arizona judgment.

<sup>5</sup> Nowak may litigate and defend on the issue of paternity because § 769.315, STATS., does not apply to a void judgment.